



07-26-07

Attorney Docket No.: 19662-026001

DAC/JFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Gene Parunak et al. Art Unit : 1743
Serial No. : 10/014,520 Examiner : Brian J. Sines
Filed : December 14, 2001 Conf. No. : 3929
Title : METHODS AND SYSTEMS FOR PROCESSING MICROFLUIDIC SAMPLES
OF PARTICLE CONTAINING FLUIDS

MAIL STOP PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Applicants hereby request reconsideration of the Patent Term Adjustment (PTA) of the above-identified U.S. Patent Application under 37 C.F.R. § 1.705(b). Under § 1.705(b) Applicants may request reconsideration of PTA on or before payment of the issue fee, if Applicants believe that the amount of PTA indicated on the Notice of Allowance (form PTOL-85 "Determination of Patent Term Adjustment under 35 U.S.C. § 154(b)") is in error.

In the instant application, the Form PTOL-85 indicates the PTA would be 34 days. Because Applicants believe that the correct number should be 71 days, Applicants hereby request reconsideration of the PTA accorded the above-identified patent application.

Statement of Facts

The Notice of Allowance (form PTOL-85), mailed April 24, 2007, stated that the PTA would be 34 days, arising from cumulative PTO delays of 285 days, and cumulative delays attributable to Applicants of 251 days. Applicants have checked the file history of the instant application and have also reviewed the "Patent Term Adjustment History" for the instant application, as it appears on the Patent Application Information and Retrieval (PAIR) section of the U.S. PTO's web-site.

07/24/2007 CKHLOK 00000012 061050 10014520

00 FEE PAID 200.00 DA

CERTIFICATE OF MAILING BY EXPRESS MAIL

Express Mail Label No. EV 744 620 934 US

JULY 24, 2007

Date of Deposit

Applicants believe that the period of 62 days attributed to Applicants' delay in responding to the Non-Final Rejection mailed May 19, 2004 is in error because it overlooks the fact that a "Notice of Restarted Response Period" was mailed on June 25, 2004. The reason for restarting the period for response was that the original Non-Final Office Action mailed May 19, 2004, was mailed to a firm not of record in the application (Fasken Martineau DuMoulin LLP), despite Applicants' earlier-filed Revocation and New Power of Attorney, made of record by the Office in the instant application on February 6, 2004. Applicants believe that the mailing of the Non-Final Office Action to a firm other than the one of record was a PTO error. It is consistent with that belief that the Office restarted the period of time for response after mailing out a copy of the Non-Final Office Action to Applicant's counsel of record on June 25, 2004.

Accordingly, the period of time for response to the non-final action in question should start on June 25, 2004, some 37 days later than the date of original mailing used by the PTO. The 3-month date for response to the Non-Final Action thus expired on September 25, 2004. Therefore, Applicants' delay in this instance is 25 days (measured from September 25, 2004 to October 20, 2004, the filing date of Applicants' response) and not 62 days.

Accordingly, the overall total of Applicants' delay was over-estimated by 37 days and should have been 214 days instead of 251 days. Therefore, the overall PTA due to Applicant should have been 285 – 214 days, i.e., 71 days.

Applicants assert that the subject U.S. patent is not subject to a terminal disclaimer, and that Applicants did not fail to engage in reasonable efforts to conclude processing and examination of the application.

Under the provisions of 37 C.F.R. § 1.705(b), Applicants timely submit this request for reconsideration of PTA concurrently with payment of the issue fee.

[FEE AUTHORIZATION AND SIGNATURE BLOCK ON NEXT SHEET]

Applicant : Gene Parunak et al.
Serial No. : 10/014,520
Filed : December 14, 2001
Page : 3 of 3

Attorney Docket No.: 19662-026001

FEE AUTHORIZATION

Applicants believe that the error in patent term adjustment was a result of PTO error, and, therefore, that no fee is owed with this request. Nevertheless, in compliance with 37 C.F.R. § 1.705(b)(1), Applicants hereby authorize payment of the fee of \$200.00, under 37 C.F.R. § 1.18(e). No other fee is believed due with this response. However, should the Commissioner determine otherwise, he is authorized to charge any additional fee(s) associated with this communication or to credit any overpayment to our deposit account number 06-1050 (order no. 19662-026001).

Respectfully submitted,

Date: July 24, 2007

Richard G. A. Bone

Richard G. A. Bone
Reg. No. 56,637

Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, California 94063
Telephone: (650) 839-5070
Facsimile: (650) 839-5071

50428187.doc